

by him, and sets up, by way of defence against the present demand, that he was taken by surprise at the trial, and that the estate of Jesse Hughes, is entitled to sundry discounts and deductions, for expenses incurred by him on many accounts, and especially insists, that with regard to the negro Isaac, the verdict was erroneous and would have been different, but for his inability to prove facts, which would have shown him to have been the property of Jesse Hughes.

The principal point of controversy in this case, is as to the true ownership of Isaac, and a mass of evidence has been collected, bearing upon the question. But before any remarks are made upon it, it is proper to consider the effect of the recovery at law, which, on the part of the complainant, is regarded as conclusive upon the question of title, whilst the defendant insists, it is no evidence whatever as between these parties.

Looking to the pleadings in that case, the parties do not appear in their representative characters, and the record, therefore, viewed alone, does not show that the title of Jesse and Josiah Hughes was involved. It is true, the demand made on the defendant, Jones, on the 9th of April, 1839, preliminary to the institution of the action at law, does state that the plaintiff claimed the negroes as administrator of Josiah Hughes, but it does not say, that he claimed them of the defendant Jones, in his representative character, and as the demand constitutes no part of the record, it would not be possible, unless proof, *aliunde*, may be resorted to, to show that the title of the parties to the suit, in their representative capacities, was drawn in question. My opinion is, that for the purpose of showing what was the issue in the case at law, the party relying on the judgment is not restricted to the record itself, and that he may show by evidence, *dehors*, what matters were litigated between the parties, and decided by the court. Unless this be so, there are a number of cases in which general pleading is allowed, where it would not be practicable for any of the parties to avail themselves of a former decision, because in those cases, the record does not disclose the precise questions in issue. It is, therefore, absolutely indispensable in such cases, when a matter has